

PATENTS

**IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

S/N: 10/682,601
Filed: 10/09/2003
Inventor: Clubb, et al.

Examiner: Brian P. Whipple
Art Unit: 2448
Atty. Ref.: 1160215/0509834
Customer No: 26874

Title: System and Method for Work Management

REPLY BRIEF

Board of Patent Appeals and Interferences
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The applicants submit the following Reply Brief, under MPEP § 1208, in response to Examiner's Answer, dated March 28, 2011 (*Examiner's Answer*), relating to the above-captioned patent application.

The substance of the Examiner's Answer to the appeal brief filed by the Applicant on January 12, 2011 (*Appeal Brief*) begins on page 10 of the Answer and focuses on Claim 32. Applicant reiterates all of the arguments raised in the Appeal Brief but wishes to specifically respond to three points in the Examiner's Answer to support its earlier contentions that the Examiner did not establish that the claimed invention as a whole would have been obvious¹ because all of the claim limitations must be considered in evaluating patentability.²

1. Applicant Disagrees that Examiner Has Shown that U.S. Publication No. 2002/0129127 (Romero) Discloses Logical Partitions Associated with Different Subsets of Consumer Identifiers (*see*, Claim 32)³
2. Applicant Disagrees with Examiner that Romero Inherently Discloses that the "Determination Occurs After Determining Which Logical [Server/Datastore] Partition Said Request Is Associated With"⁴
3. Applicant Disagrees with the Examiner that U.S. Patent No. 5,915,094 (Kouloheris) Discloses Determining a Specific Physical Server After Determining Which Specific Logical Server Partition Said Request Is Associated With⁵

¹ MPEP 2142.

² "All words in a claim must be considered in judging the patentability of that claim against the prior art." MPEP 2143.03 *citing In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

³ Examiner's Answer at page 9.

⁴ Examiner's Answer at page 12.

⁵ Examiner's Answer at page 12.

1. Applicant Disagrees that Examiner Has Shown that U.S. Publication No. 2002/0129127 (Romero) Discloses Logical Partitions Associated with Different Subsets of Consumer Identifiers⁶

The Examiner reiterated his contention that the partition relocation of U.S. Patent No. 6,052,724 (Willie), in combination with Romero, discloses the limitation in Claim 32 that “the logical partitions are associated with different subsets of consumer identifiers.”⁷ Citing Romero at [0021:21-23] and [0035:8-9], the Examiner contends that Romero discloses subsets of consumers by the language “the partitions ... may be dedicated (e.g., to a corporate department)” and “the partition profile ... may include a department ID.”⁸ The Examiner did not consider all of the claim limitations.⁹

Claim 32 of the Application includes the following language:

32. A work management computer system comprising wherein said work management system is designed to permit said specific logical server partition to be moved to a different physical server independent of any other logical server partitions which are associated with a different subset of consumer identifiers residing on said specific physical server ...¹⁰ (emphasis added).

⁶ Examiner's Answer at page 9.

⁷ Examiner's Answer at page 9.

⁸ Examiner's Answer at page 9.

⁹ "All words in a claim must be considered in judging the patentability of that claim against the prior art." MPEP 2143.03 *citing In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

¹⁰ Similar language applies to the datastore counterpart: *wherein said work management system is designed to permit said specific logical datastore partition to be moved to a different physical datastore independent of any other logical datastore partitions which are associated with a different subset of consumer identifiers residing on said specific physical datastore.*

In addition to the other arguments raised in the Appeal Brief regarding this limitation, the Examiner did not address why the bolded/italicized language is not sufficient to elucidate that the present Application claims the movement of a **SPECIFIC** partition independent of any other logical partition residing on said physical entity which are associated *with a different subset* of consumer identifiers residing on said specific physical server. This was argued both in the July 2010 RCE and the telephonic interview, dated October 21, 2010 (Phone Interview).¹¹ Additionally, the Examiner has **not** shown that, even if one assumes that Romero discloses subsets and that Willie discloses partition relocation, the combination of Willie and Romero disclose the relocation of a “**different subset**”. Without the disclosure of this required limitation, the Examiner has not established a prima facie case of obviousness. Therefore, Applicant respectfully requests that the Board of Patent Appeals and Interferences (BPAI) withdraw the rejection of the Group I claims (including Claim 32), under 35 USC §103(a).

2. Applicant Disagrees with Examiner that Romero Inherently Discloses that the Determination Occurs After Determining Which Logical [Server/Datastore] Partition Said Request Is Associated With¹²

In the Office Action, dated August 25, 2010, (*August 2010 OA*), the Examiner stated, “*Romero and Willie are silent on [determining a specific physical server] after determining which specific logical server partition said request is associated with.*”¹³ The Examiner’s Answer appears to contradict this statement¹⁴ when it states, “[i]f Romero receives a request related to a logical server and determines associated physical servers/datastores, then by definition the determination occurs “after determining which specific logical [server/datastore] partition said request is associated with.”¹⁵ This statement misunderstands the mechanism utilized in Romero. Applicant directs the BPAI to Applicant’s Appeal Brief, filed January 12, 2011 (*Appeal Brief*), which alludes to prior arguments made that the style and order of the

¹¹ Application at [0047]: The system may migrate at least one logical datastore of said set of logical datastores from said pre-existing physical datastore to said additional datastore. The system may remap said logical datastore from said pre-existing physical datastore to said additional datastore.

¹² Examiner’s Answer at page 11.

¹³ See, August 2010 OA at page 5.

¹⁴ Examiner’s Answer at page 11.

determinations in Romero are different from those claims in the present Application. Specifically,

*Determining the logical partition associated with a consumer before determining the logical-to-physical server mapping adds a layer of abstraction **not present in Romero's style of partitioning.** This layer of abstraction permits a "logical partition", associated with a consumer, to be moved to a different physical server more easily than in the prior art.¹⁶ This is accomplished through a multi-stage approach, an example of which is illustrated in Figure 10.¹⁷*

None of the Examiner's citations to Romero, in the Examiner's Answer, disclose this sequence in, for example, Claim 32¹⁸, either explicitly or implicitly. Thus, the Examiner has not established a case for a prima facie case of obviousness. Therefore, Applicant respectfully requests that the BPAI withdraw the rejection of the Group I claims (including Claim 32), under 35 USC § 103(a).

¹⁵ Examiner's Answer at page 11.

¹⁶ Application at paragraph [0038]: Here, logical processing may be moved from physical node to physical node, the system does not require the creation of additional processes at the operating system level. Work may be moved but not processes.

¹⁷ Appeal Brief at page 20.

¹⁸ Claim 32: ...wherein said distributor further determines a specific physical server wherein said specific logical server partition resides after determining which specific logical server partition said request is associated with; wherein said distributor further determines a specific physical datastore wherein said specific logical datastore partition resides after determining which specific logical datastore partition said request is associated with ...

3. Applicant Disagrees with the Examiner that U.S. Patent No. 5,915,094 (Kouloheris) Discloses Determining a Specific Physical Server After Determining Which Specific Logical Server Partition Said Request Is Associated With¹⁹

In the Examiner's Answer, the Examiner disagreed that he improperly sliced out the language and erred in rejecting the current claims in further view of Kouloheris. It is not permissible to slice out a phrase from the totality of the language used in the present claims because, once again, all of the claim limitations must be considered in evaluating patentability.²⁰

In the August 2010 Office Action, the Examiner stated:

Kouloheris discloses [determining a specific physical server] after determining which specific logical server partition said request is associated with (Abstract, ln. 1-3; Col. 17, ln. 66 — Col. 18, ln. 10); [determining a specific physical datastore] after determining which specific logical datastore partition said request is associated with (Abstract, ln. 1-3; Col. 17, ln. 66 — Col. 18, ln. 10).²¹

The present claims encapsulate the multi-stage approach, illustrated by Figure 10 of the Application, by the combination of the following two limitations: "determines a specific physical server ... after determining which specific logical server partition," with the earlier limitation "wherein a consumer is associated with a ... logical server partition based a consumer identifier."²² Both limitations are included in Claim 32; so, the operation of the two limitations, in the context of the claim, must be evaluated together rather than mounting rejections against each as an island unto itself.²³ Kouloheris is a hard-coded system in which each logical disk statically corresponds to a set of physical disks. Citing to this patent as an example of how the

¹⁹ Examiner's Answer at page 12.

²⁰ See, MPEP 2142. See also, "All words in a claim must be considered in judging the patentability of that claim against the prior art." MPEP 2143.03 citing In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

²¹ August 2010 OA at #8 (page 7).

²² Application at [0023], [0104].

²³ See, MPEP 2142. See also, "All words in a claim must be considered in judging the patentability of that claim against the prior art." MPEP 2143.03 citing In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

concept of determining a specific physical server after determining which specific logical server partition was known in the art entirely misses the point of the presently claimed invention's flexibility which allows for the consolidation of the network, cache, and I/O resources needed to further allow the system to be divided into a large number of logical partitions to give fine grained control of the system processing.²⁴

4. Conclusion

The Office's rejection of Claim 32 (and the other claims in Group I) failed to consider all of the claim limitations as an integrated whole and therefore failed to appreciate the novel and nonobvious functionality provided by the additional layer of extraction which associates a logical partition with different subsets of consumer identifiers and then engages in the steps of determining a specific physical server after determining which specific logical server partition said request is associated with.²⁵

As Applicant has stated before, Romero discloses partitions being allocated to subsets. Willie discloses the movement of an entire logical partition to another physical server. Kouloheris discloses a logical index to a set of physical disks.²⁶ None of these references (nor any combination thereof) disclose, teach, or suggest all of the limitation of the presently claimed invention when that claimed invention is considered as a whole. Specifically, the Office's rejection of Claim 32 (and the rest of the claims in Group I), as obvious over the combination of Romero, Willie, and Kouloheris, is improper as none of those references teach or suggest either the concept of individually moving a subset or the abstraction of associating logical partitions with consumer subsets before determining the mapping between logical and physical partitions.

²⁴ See, Application at [0027]. See also, July 2010 RCE at page 12.

²⁵ Application at [0023], [0038], [0104].

²⁶ The striping system disclosed by the Examiner's citation of Kouloheris (Col. 17:66—18:10) describes the logical disk as nothing more than an index to its associated physical disks. It says nothing about facilitating "said specific logical server partition to be moved to a different physical server independent of any other logical server partitions which are associated with a different subset of consumer identifiers" as is presently claimed. Indeed, Kouloheris teaches against the presently claimed invention at 16:1-6 which states that it will ALWAYS retrieve a particular movie segment from the same physical disk every time: "Kouloheris at 16:1-6: The schedule table for the four streams of FIG. 11 is shown in FIG. 12a. If a stream starts playing in a disk cycle labeled s, i.e. stripe 1 of the movie is retrieved from disk 0 in cycle labeled s, then the stream will always access disk 0 in cycle labeled s and access disk (4—s) mod 4 in cycle labeled 0." [Emphasis added.]

Thus, the Applicant respectfully requests the Board to reverse the rejections of the Office so that this Application might proceed to an allowance at the earliest possible date.

The Commissioner for Patents is hereby authorized to charge any deficiency, including any fees required for an extension of time not already paid for or any other required fees not already paid for, or to credit any overpayment of fees, to Frost Brown Todd LLC Deposit Account No. 06-2226.

Respectfully submitted,

Clubb et al.

By: /Ria Farrell Schalnat/
Ria Farrell Schalnat Reg. No. 47,058
Attorney for Applicants
FROST BROWN TODD LLC
2200 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202
(513) 651-6426